

#16206
6-17-97

**ORDER ADOPTING REGULATIONS OF HAYS COUNTY, TEXAS
FOR CERTAIN SEXUALLY ORIENTED BUSINESSES**

STATE OF TEXAS §
 §
COUNTY OF HAYS §

The Commissioners' Court of Hays County, Texas convened in regular session, sitting as the governing body of Hays County, Texas at the Hays County Courthouse Annex in the City of San Marcos, Texas on the 17th day of June , 1997, with the following members present, to-wit:

Eddy A. Etheredge	County Judge
Debbie Gonzales Ingalsbe	Commissioner Pct. #1
Jefferson W. Barton	Commissioner Pct. #2
William "Bill" Burnett	Commissioner Pct. #3
Russ G. Molenaar	Commissioner Pct. #4

and the following members(s) being absent, to wit: none,
when the following business was transacted:

Commissioner Burnett introduced an order and made a motion that the same be adopted. Commissioner Molenaar seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote.

AYES: 5

NAYS: 0

The County Judge thereupon announced that the order had been duly and lawfully adopted. The order thus adopted follows:

**ORDER ADOPTING REGULATIONS OF HAYS COUNTY, TEXAS FOR
CERTAIN SEXUALLY ORIENTED BUSINESSES**

WHEREAS, Texas Local Government Code Annotated Chapter 243 as enacted and amended by the Legislature of the State of Texas authorizes the Commissioner's Court of any county to adopt regulations regarding sexually oriented businesses as the county considers necessary to promote the public health, safety or welfare; and

WHEREAS, the Commissioners' Court of Hays County, Texas makes the following findings with regard to sexually oriented businesses:

Sexually oriented businesses desiring to locate in the county will require special supervision from the public safety agencies of the county in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the county.

Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution.

Law enforcement agencies in other nearby cities such as San Antonio and Austin have made a substantial number of arrests for sexually related crimes in sexually oriented business establishments.

The concern over sexually transmitted diseases and A.I.D.S. is a legitimate health concern of the county which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens.

Licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

There is convincing documented evidence that sexually oriented businesses, because of their very nature, have deleterious effect on both the existing businesses around them and surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

It is recognized that sexually oriented businesses due to their nature have serious objectionable operational characteristics particularly when they are located in close proximity to each other, thereby contributing to the blighting of neighborhoods and downgrading the quality of life in adjacent areas.

The Commissioners' Court desires to minimize and control these adverse effects and thereby preserve the property values and character of surrounding neighborhoods, protect the citizens from increased crime, preserve the quality of life, and protect the health, safety and welfare of the citizenry; and

WHEREAS, the Commissioners' Court makes the following findings with regard to the licensing of sexually oriented business:

It is in the interest of the public safety and welfare to prohibit persons convicted of certain crimes from engaging in the occupation of operating a sexually oriented business.

The Commissioners' Court, in accordance with Article 6252-13c, V.A.C.S., has considered the following criteria:

the nature and seriousness of the crime:

the relationship of the crimes to the purposes for requiring a license to engage in the occupation:

the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved: and

the relationship of the crimes to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the licensed occupation:

and has been determined that the crimes set forth in this order are serious crimes which are directly related to the duties and responsibilities of the occupation of operating a sexually oriented business. The Commissioners' Court has further determined that the very nature of the occupation of operating a sexually oriented business brings a person into constant contact with persons interested in sexually oriented materials and activities thereby giving the person repeated opportunities to commit offenses against public order and decency or crimes against the public health, safety or morals should he be so inclined. Thus, it is the opinion of the Commissioners' Court that the listed crimes render a person unable, incompetent and unfit to perform the duties and responsibilities accompanying the operation of a sexually oriented business in a manner that would promote the public safety and trust.

The Commissioners' Court has determined that no person who has been convicted of a crime as set forth in this ordinance is presently fit to operate a sexually oriented business until the respective time periods designated have expired.

It is the intent of the Commissioners' Court to disqualify a person from being issued a sexually oriented business license by the County if he has been convicted within the designated time period of any of the crimes set forth in this ordinance: and

WHEREAS, due notice of the referenced meeting of Commissioners' court was given as required by Vernon's Texas Codes Annotated Government Code Chapter 551:

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, SITTING AS THE GOVERNING BODY OF HAYS COUNTY, TEXAS:


That the regulations attached and appended hereto, entitled "Regulations of Hays County, Texas for Certain Sexually Oriented Businesses" are made a part of this Order, and are adopted as the regulations of Hays County, Texas, and all officials of Hays County are DIRECTED to perform such duties as required of them under said Regulations.


This order supersedes any and all previous orders relevant of sexually oriented businesses in the unincorporated areas of Hays County.


APPROVED IN OPEN SESSION this 17th day of June, 1997.


HAYS COUNTY COMMISSIONERS' COURT


EDDY A. ETHEREDGE, County Judge



DEBBIE GONZALES INGALSBE
Commissioner Precinct 1


JEFFERSON W. BARTON
Commissioner Precinct 2


WILLIAM "BILL" BURNETT
Commissioner Precinct 3


RUSS G. MOLENAAR
Commissioner Precinct 4

ATTEST:


MARGIE T. VILLALPANDO
County Clerk



**REGULATIONS OF HAYS COUNTY, TEXAS FOR
CERTAIN SEXUALLY ORIENTED BUSINESSES**

SECTION 1. AUTHORITY.

These Regulations are adopted by the Commissioners' Court of Hays County, Texas, acting in its capacity as the governing body of Hays County, Texas. Authority of Hays County to adopt these Regulations resides in Texas Local Government Code Chapter 243.

SECTION 2. ADMINISTRATION.

The Commissioners' Court hereby designates the Sheriff to issue permits pursuant to the above authority, subject to the inspections and other conditions specified herein. The administration of these Regulations, including but not limited to issuance of permits and procedures for the conduct on inspections hereunder, shall be established and maintained by the Sheriff or his duly authorized designee. Any peace officer certified by the State of Texas may enforce these regulations.

SECTION 3. PURPOSE AND INTENT.

It is the purpose of these Regulations to regulate sexually oriented businesses to promote the health, safety, morals and general welfare to the citizens of the County, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the county. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of these Regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

SECTION 4. AREA OF JURISDICTION.

1. These Regulations shall apply to all of the areas of County except for the areas within the boundaries of the incorporated cities and towns of Hays County.
2. These regulations shall also apply to those incorporated cities or towns or villages that have adopted these regulations and executed cooperative agreements with Hays County for their enforcement.

SECTION 5. DUTIES AND POWERS OF SHERIFF

1. The Sheriff shall enforce these regulations and make appropriate recommendations to proper authorities when instances of noncompliance with these regulations have been determined.

SECTION 5. DEFINITIONS.

As used in these Regulations:

1. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
2. "Adult bookstore" or "adult video store" means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

- a. books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video or audio cassettes or video or audio reproductions, slides or other visual or audio representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or
 - b. instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities".
3. **"Adult cabaret"** means a nightclub, bar, restaurant or similar commercial establishment which features:
- a. persons who appear in a state of nudity;
 - b. live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities"; or
 - c. films, motion pictures, video or audio cassettes or video or audio reproductions, slides or other visual or audio representations which depict or describe "specified sexual activities" or "specified anatomical areas".
4. **"Adult motel"** means a hotel, motel or similar commercial establishment which:
- a. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
 - b. offers a sleeping room for rent for a period of time that is less than 10 hours; or
 - c. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.
5. **"Adult motion picture theater"** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes or video reproductions, slides or other visual representations are regularly shown which depict or describe "specified sexual activities" or "specified anatomical areas".
6. **"Adult theater"** means a theater, concert hall, auditorium or similar commercial establishment which features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas".
7. **"Church or place of religious worship"** means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or propagating a particular form of belief.
8. **"Child care facility"** means a building used as a day nursery, children's boarding home, child placing agency or other place for the care or custody of children under fifteen years of age, licensed by the State of Texas pursuant to Vernon's Texas Codes Annotated Human Resources Code, Chapter 42.
9. **"Dwelling"** means a house, duplex, apartment, townhouse, condominium, mobile home or any other building used for residential purposes, whether single family or multi-family, attached or detached, and regardless of whether tenant or owner occupied .
10. **"Escort"** means a person, who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
11. **"Escort agency"** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.
12. **"Establishment"** means and includes any of the following:
- a. the opening or commencement of any sexually oriented business as a new business;

- b. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - c. the addition of any sexually oriented business to any other existing sexually oriented business; or
 - d. the relocation of any sexually oriented business.
13. **“Hospital”** means a building used to provide health services for human in-patient medical care for the sick or injured licensed pursuant to the Texas Hospital Licensing Law Vernon’s Texas Codes Annotated Health and Safety Code Chapter 241 or operated by an agency of the federal government, or a convalescent facility licensed pursuant to Vernon’s Texas Codes Annotated Health and Safety Code Chapter 242.
 14. **“Licensee”** means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.
 15. **“Massage parlor”** means any place where any portion of the body of a person is massaged by any portion of the body of another, when either person is in a state of nudity or semi-nudity, and where such service is performed for any form of consideration.
 16. **“Nude modeling studio”** means any place where a person who appears in a state of nudity or displays “specified anatomical areas” to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other person who pay money or any form of consideration.
 17. **“Nudity”** or a **“state of nudity”** means the bare appearance of a human buttock, anus, male genitals, female genitals or female breast, regardless of whether uncovered or covered with translucent or transparent material.
 18. **“Person”** means an individual, proprietorship, partnership, corporation, association or other legal entity.
 19. **“Public building”** means a building used by federal, state or local government and open to the general public.
 20. **“Public park”** means a tract of land maintained by the federal, state or local government for the recreation and enjoyment of the general public.
 21. **“Principal business”** or **“primary business”** means;
 - a. 35% or more of gross floor areas is devoted to sale, display or inventory of items which depict or describe “specified sexual activities” or “specified anatomical areas” or which are designed for use in connection with “specified sexual activities”; or
 - b. 35% or more of gross receipts is derived from the sale or rental of items which depict or describe “specified sexual activities” or “specified anatomical areas” or which are designed for use in connection with “specified sexual activities”.
 22. **“School”** means a building where persons regularly assemble for the purpose of instruction or education together with the playgrounds, dormitories, stadium and other structures or grounds used in conjunction therewith.
 23. **“Semi-nude”** means a state of dress in which clothing or other matter covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.
 24. **“Sexual encounter center”** means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:
 - a. physical contact in the form of wrestling or tumbling between male and female persons or persons of the same sex; or
 - b. activities between male and female persons or persons of the same sex when one or more persons is in a state of nudity or semi-nude.
 25. **“Sexually oriented business”** means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, massage parlor, nude model studio, sexual encounter center or

other commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. The commercial enterprises or activities described above shall be subject to regulation under this order at any location at which they may occur, whether conducted within a building, a temporary enclosure or out of doors.

26. **"Sheriff"** means the Hays County Sheriff or his authorized agents.
27. **"Specified anatomical areas"** means human genitals in a state of sexual arousal.
28. **"Specified sexual activities"** means and includes any of the following:
 - a. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 - b. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
 - c. masturbation, actual or simulated; or
 - d. excretory functions as part of or in connection with any of the activities set forth in a. through c. above.
29. **"Substantial enlargement"** of a sexually oriented business means the increase in floor area occupied by the business by more than 25%, as the floor area exists at the time of passage of these Regulations.
30. **"Transfer of ownership or control"** of a sexually oriented business means and includes any of the following:
 - a. the sale, lease or sublease of the business;
 - b. the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
 - c. the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business.

SECTION 7. CLASSIFICATION.

1. Sexually oriented businesses are classified as follows:
 - a. adult arcades;
 - b. adult bookstores or adult video stores;
 - c. adult cabarets;
 - d. adult motels;
 - e. adult motion picture theaters;
 - f. adult theaters;
 - g. escort agencies;
 - h. massage parlors;
 - i. nude model studios; and
 - j. sexual encounter centers.

2. The following are exempt from regulation under these Regulations:
 - a. a bookstore, movie theater or video store, unless that business is an adult arcade, adult bookstore, adult video store, adult motion picture theater or adult theater and defined herein;
 - b. a business operated by or employing a licensed psychologist, licensed cosmetologist or licensed barber engaged in performing functions authorized under the license held; and
 - c. a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.
3. The commercial enterprises or activities enumerated in this Section shall be subject to regulation under this order at any location at which they may occur, whether conducted within a building, a temporary enclosure or out of doors.

SECTION 8. LICENSE REQUIRED.

1. A person commits an offense if he operates a sexually oriented business without a valid license, issued by the county for the particular type of business.
2. An application for a license must be made on a form provided by the Sheriff.
3. The application shall set forth the following:
 - a. The name of the applicant and whether the applicant is an individual, general partnership, limited partnership, corporation or other entity.
 - b. The name under which the establishment is to be operated and a general description of the service to be provided.
 - c. The address and a full legal description of the parcel of land on which the establishment is to be located.
 - d. The name, residence address and telephone number of the manager or other individual to be principally in charge of the operation of the establishment.
4. The application shall be accompanied by the following:
 - a. A tender of the correct permit fee as hereinafter provided.
 - b. A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (V.T.C.A. Business and Commerce Code, Chapter 36) if the applicant is to operate the establishment under an assumed name.
 - c. A certified copy of the articles of incorporation, together with all amendments thereto, if applicant is a Texas corporation.
 - d. A certified copy of the certificate of authority to transact business in this State, together with all amendments thereto, if applicant is a foreign corporation.
 - e. A certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act (V.A.C.S. Art. 6132a), if the applicant is a limited partnership formed under the laws of Texas.
 - f. A certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act, if the applicant is a foreign limited partnership.

5. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 23 of these Regulations shall submit a diagram meeting the requirements of Section 23.
6. The applicants must be qualified according to the provisions of these Regulations and the premises must be inspected and found to be in compliance with the law by the Health Department, Fire Marshal And County Surveyor/Road Department.
7. The applicant must certify that the proposed sexually oriented business will meet the location requirements of Section 17 of these Regulations.
8. Each application must contain a written declaration that the information contained in the application is true and correct, said declaration being duly dated and signed in the County. If a person who wishes to operate a sexually oriented business is an individual, he must sign and swear to the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10 percent or greater interest in the business must sign and swear to the application for a license as applicant. Each applicant must be qualified under Section 9 and each applicant shall be considered a licensee if a license is granted.

SECTION 9. ISSUANCE OF LICENSE.

1. The Sheriff or Health Department shall approve the issuance of a license to an applicant within 60 days after receipt of a completed application unless he finds one or more of the following to be true:
 - a. An applicant is under 18 years of age.
 - b. An applicant or an applicant's spouse is overdue in his payment to a Texas county or municipality of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
 - c. An applicant has failed to provide information reasonably necessary of issuance of the license or has falsely answered a question or request for information on the application form.
 - d. An applicant or the applicant's spouse has been convicted of or placed on probation for a violation of a provision of these Regulations within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
 - e. An applicant is residing with a person who has been denied a license to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
 - f. The premises to be used for the sexually oriented business has not been approved by the Health Department, Fire Marshal, Environmental Health Department And The Road Department as being in compliance with applicable laws, orders and regulations.
 - g. The license fee required by these Regulations has not been paid.
 - h. An applicant or the proposed establishment is in violation of or is not in compliance with Section 11, 16, 17, 19, 20, 21, 22,23 or 24.
 - i. An applicant or an applicant's spouse has been convicted of or placed on probation or granted parole for a crime:
 - (1) involving:
 - (a) any of the following offenses : prostitution ; promotion of prostitution; aggravated promotion of prostitution; compelling prostitution; obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; or possession of child pornography;

- (b) any of the following offenses: public lewdness, indecent exposure, or indecency with a child;
- (c) sexual assault or aggravated sexual assault;
- (d) incest, solicitation of a child, or harboring a runaway child;
- (e) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(2) for which:

- (a) less than two years have elapsed since the date of conviction or date of release from confinement imposed for the conviction or end of the probationary period, whichever is the later date, if the conviction or probation is for a misdemeanor offense;
 - (b) less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction or end of the probationary or parole period, whichever is the later date, if the conviction or probation is for a felony offense; or
 - (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction or the end of the probationary period, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.
2. The fact that a conviction or probationary term is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.
 3. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

SECTION 10. FEES.

The annual fee for a sexually oriented business is **\$ 1000.00**

SECTION 11. INSPECTION.

1. An applicant or licensee shall permit representatives of the Sheriff's Department, Health Department, Fire Marshal, Environmental Health And Road Department to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law and these Regulations, at any time it is occupied or open for business.
2. A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Sheriff's Department, Health Department, Fire Marshal, Environmental Health Or Road Department at any time it is occupied or open for business.

SECTION 12. EXPIRATION OF LICENSE.

1. Each license shall expire one year from the date of issuance and may be renewed only by making an application as provided in Section 8. Application for renewal must be made at least 30 days before the expiration date. When made less than 30 days from the expiration date the expiration of the license will not be effected and the renewal application will be treated as a new application.
2. When the Sheriff denies renewal of a license the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Sheriff finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

SECTION 13. SUSPENSION.

The sheriff shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

1. violated or is not in compliance with Section 11, 16, 17, 19, 20, 21, 22, 23 or 24 of these Regulations;
2. engaged in excessive use of alcoholic beverages while on the premises of the sexually oriented business;
3. refused to allow an inspection of the sexually oriented business premises as authorized by these Regulations;
4. knowingly permitted gambling by any person on the sexually oriented business premises;
5. demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

SECTION 14 REVOICATION.

1. The Sheriff shall revoke a license if a cause of suspension in Section 13 occurs and the license has been suspended within the preceding 12 months.
2. The Sheriff shall revoke a license if he determines that:
 - a. a licensee gave false or misleading information in the material submitted to the Sheriff during the application process;
 - b. a licensee or an employee of a licensee has knowingly possessed, used or sold, or allowed possession, use or sale of controlled substances on the premises;
 - c. a licensee or an employee of a licensee has knowingly allowed prostitution of the premises;
 - d. a licensee or an employee of a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - e. a licensee has been convicted of or placed on probation for an offense listed in Section 9 for which the time period required in Section 9 has not elapsed;
 - f. on two or more occasions within a 12-month period a person or persons committed an offense occurring in or on the licensed premises of a come listed in Section 9 for which a conviction has been obtained or the person or persons placed on probation, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;
 - g. a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises; or
 - h. a licensee is delinquent in payment to the County for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business.
3. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
4. Subsection 2.g. of this section does not apply to adult motels as a ground for revoking the license.
5. When the Sheriff revokes a license the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the Sheriff finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final. If the license was revoked under subsection 2.e. of this section an applicant may not be granted another license until the appropriate number of years required under Section 9 has elapsed.

SECTION 15 APPEAL.

If the Sheriff denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant or licensee by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the Sheriff to the Commissioner's Court. The filing of an appeal stays the action of the Sheriff in suspending or revoking a license until the Commissioner's Court makes a final decision.

SECTION 16 TRANSFER OF LICENSE.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

SECTION 17 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

1. A person commits an offense if he operates or causes to be operated a sexually oriented business within 2000 feet of the property line of:
 - a. a child care facility;
 - b. a church or place of religious worship;
 - c. a dwelling;
 - d. a hospital;
 - e. a building in which any type of alcoholic beverages are sold;
 - f. a public building;
 - g. a public or private park/playscape; or
 - h. a school.
2. A person commits an offense if he causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 2000 feet of another sexually oriented business.
3. A person commits an offense if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
4. For purposes of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises in subsections 1a. through 1.d. above.
5. For purposes of subsection 2 of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
6. Any sexually oriented business lawfully operating upon passage of this ordinance that is in violation of this section shall be deemed to be a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more.

Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 2000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operated at a particular location is the conforming use and the later-established business(es) is nonconforming.

SECTION 18. EXEMPTION FROM LOCATION RESTRICTIONS.

1. If the Sheriff denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 17 of these Regulations, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with Commissioner's Court a written request for an appeal from the locational restrictions of Section 17.
2. If the written request is filed with Commissioner's Court within the 10-day limit, the Court shall set a date for hearing on the appeal within 60 days from the date the written request is received. The appeal will be placed on the Commissioner's Court agenda and the Court shall notify both the applicant and the Sheriff of the hearing date.
3. The Commissioners' Court may, in its discretion, grant an exemption from the locations restrictions of Section 17 if it makes the following finding:
 - a. The location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
 - b. The granting of the exemption will not violate the spirit and intent of these Regulations;
 - c. The location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or exchange the development of a blighted neighborhood;
 - d. The location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts toward neighborhood renewal or restoration; and
 - e. All other applicable provisions of this chapter will be observed.
4. The Commissioners' Court shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the Commissioners' Court is final.
5. If the Commissioners' Court grants the exemption, the exemption is valid for one year from the date of Court action. Upon expiration of an exemption the sexually oriented business is in violation of the locational restrictions of Section 17 until the applicant applies for and receives another exemption.
6. If the Commissioners' Court denies the exemption the applicant may not re-apply for an exemption until at least 12 months have elapsed since the date of Court action.
7. The grant of an exemption does not exempt the applicant from any other provisions of this chapter than the locational restrictions of Section 17.

SECTION 19. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

1. An escort agency shall not employ any person under the age of 18 years.
2. A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 years.

SECTION 20. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS AND MASSAGE PARLORS.

1. A nude model studio or massage parlor shall not employ any person under the age of 18 years.
2. A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio or massage parlor.
3. It is a defense to prosecution under this subsection if the person under 18 years of age was using a rest room not open to public view or person of the opposite sex.

4. A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio or massage parlor premises which can be viewed from the public right of way.
5. A nude model studio or massage parlor shall not place or permit a bed, sofa, mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. A massage parlor may place or permit in rooms used for massage purposes a table specially adapted for such purposes.

SECTION 21. ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.

1. A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
2. A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
3. It is a defense to prosecution under this subsection if the person under 18 years of age was using a rest room not open to public view or person of the opposite sex.

SECTION 22. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

1. Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in these Regulations.
2. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.
3. For purposes of this section, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

SECTION 23. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

1. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict "specified sexual activities" or "specified anatomical areas", shall comply with the following requirements:
 - a. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Sheriff may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 - b. The application shall be sworn to be true and correct by the applicant.
 - c. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Sheriff or his designee.
 - d. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

- e. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain visual representation equipment. If the premises has two or more manager's stations designated then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
 - f. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subsection e. remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is permitted access to which patrons will not be permitted in the application filed pursuant to this section.
 - g. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.
 - h. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
2. A person having a duty under this section commits an offense if he knowingly fails to fulfill that duty.

SECTION 24. DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.

- 1. A person commits an offense if, in any business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film or videocassette, the cover of which depicts in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:
 - a. human sexual intercourse, masturbation or sodomy;
 - b. fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
 - c. less than completely and opaquely covered human genitals, buttocks or that portion of the female breast below the top of the areolae or
 - d. human male genitals in a discernibly turgid state, whether covered or uncovered.
- 2. A person commits an offense if, in any business establishment open to persons under the age of 17 years, he displays any instruments, devices or paraphernalia which are designed for uses in connection with "specified sexual activities".
- 3. In this section, "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - a. it is available to the general public for handling and inspection; or
 - b. the cover or outside packaging on the item is visible to members of the general public.

SECTION 25. COUNTERFEITING, CHANGING OR DEFACING PERMIT.

It is an offense for any person to counterfeit, forge, change, deface or alter a sexually oriented business license.

SECTION 26. ENFORCEMENT.

- 1. Any person violating a provision of these Regulations commits an offense. An offense under these Regulations is a Class A misdemeanor for each day of continued violation.

2. It is a defense to prosecution under Section 8.1, 17 or 20.4 that a person appearing in a state of nudity did so in a modeling class operated:
 - a. by a proprietary school licensed by the State of Texas; a college, junior college or university supported entirely or partially by taxation; or a private college or university which maintains and operated educational programs in which credits are transferable to a college, junior college or university supported entirely or partially by taxation; or
 - b. in a structure:
 - (1) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;
 - (2) where in order to participate in a class a student must enroll at least three days in advance of the class; and
 - (3) where no more than one nude model is on the premises at any one time.
3. It is a defense to prosecution under Section 8.1 or 17 that each item of descriptive, printed, film or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political or scientific value.

SECTION 27. CIVIL ENFORCEMENT.

1. Civil enforcement of these regulations is authorized by Texas Local Government Code Annotated, § 243.010(a) (Vernon Supp. 1995).
2. When it appears that a violation of any of these regulations has occurred or is occurring, the District Attorney may bring a suit in District Court for injunctive relief against the person who committed, or is threatening to commit the violations.
3. Civil suits, excluding criminal prosecution, may not be instituted by Hays County unless the Commissioners Court has authorized the institution of the suit.

SECTION 28. AMENDMENTS.

Any provision of these Regulations may be separately amended by vote of Commissioners' Court.

SECTION 29. SEVERABILITY.

If any provision of these Regulations or their application to any person or circumstances shall be held void or unconstitutional, the invalidity of that provision does not affect any other provisions or application of these Regulations which can be given effect without the invalid provision or application, and to this end the provisions of these Regulations are declared to be severable and shall remain in full force and effect.

SECTION 30. CONFLICT WITH OTHER PROVISIONS.

All other orders and regulations of this Court in conflict herewith are hereby repealed to the extent they are in conflict. In the event of a conflict between a general and specific provision, the specific shall prevail.

SECTION 31. EFFECTIVE DATE.

These regulations shall take effect immediately upon approval by Commissioners' Court in open session.

**THE STATE OF TEXAS
COUNTY OF HAYS**

On this the 14th day of JULY, 1998, the Commissioners' Court of Hays County, Texas, met in a Regular Meeting. The following members were present, to-wit:

EDDY A. ETHEREDGE	COUNTY JUDGE
DEBBIE GONZALES INGALSBE	COMMISSIONER PCT. #1
JEFFERSON W. BARTON	COMMISSIONER PCT. #2
WILLIAM "BILL" BURNETT	COMMISSIONER PCT. #3
RUSS G. MOLENAAR	COMMISSIONER PCT. #4
MARGIE T. VILLALPANDO	COUNTY CLERK

and the following proceedings, among others, was had to wit:

17169 SET FEES FOR SEXUALLY ORIENTED BUSINESSES [T1-1029]

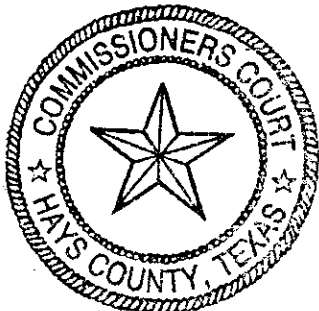
Commissioner Burnett spoke of fees that were not established last year when the SOB Ordinance was adopted. There were questions as to whether the application fee set was appropriate. He has reviewed the proposed fees with the Sheriff and the District Attorney and they are all comfortable with the fees being proposed. A member of the news media asked if there are currently any SOB establishments in the county and are these fees and rules being adopted to prohibit this type of business from operating in Hays County. Commissioner Burnett advised that there are currently no Sexually Oriented Businesses operating in the county and the ordinance does not prohibit this type of business, it only sets out rules/guidelines to be followed. A motion was made by Commissioner Burnett, seconded by Commissioner Molenaar to set fees for Sexually Oriented Businesses as proposed this date. All voting "Aye".

FEE SCHEDULE FOR SEXUALLY ORIENTED BUSINESSES HAYS COUNTY, TEXAS	
Application for Sexually Oriented Business License	\$ 1,000.00
Duplicate for lost or damaged License	\$ 15.00
Application for Exempt Certificate of Registration	\$ 50.00
Renewal Application for Exempt Certificate of Registration	\$ 25.00
Duplicate for lost or damaged Registration	\$ 15.00
Initial Operator's License	\$ 50.00
Duplicate for lost or damaged Operator's License	\$ 15.00

**THE STATE OF TEXAS
COUNTY OF HAYS**

I, Margie T. Villalpando, Clerk, County Court and ExOfficio Clerk of the Commissioners' Court, do hereby certify that the foregoing contains a true and correct copy of a Resolution adopted by the Commissioners' Court of Hays County, Texas, on July 14, 1998. Said Resolution appears in the Commissioners' Court Minutes of Hays County, Texas in Volume R on Page 75.

Given under my hand and seal of office at San Marcos, Texas this the 14th day of July, 1998.



**MARGIE T. VILLALPANDO, COUNTY CLERK &
EX OFFICIO CLERK OF THE COMMISSIONERS
COURT OF HAYS COUNTY, TEXAS**

BY Donda C. Zitsche DEPUTY